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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



DAN WYANT
DIRECTOR

VIA E-MAIL

TO: Governor Rick Snyder
Members of the Michigan Legislature

FROM: *gnk* James Kasprzak, Chief, Administration Division

DATE: March 21, 2011

SUBJECT: Report on Activities Funded by the Staff Account of the Solid Waste Management Fund for Fiscal Year (FY) 2010

In accordance with Subsection 11550(6) of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, attached is the Department of Environmental Quality's (DEQ) Report of Activities Funded by the Staff Account of the Solid Waste Management Fund for FY 2010.

If you need further information, please contact Liane J. Shekter Smith, Chief, Environmental Resource Management Division, at 517-373-9523.

Attachment

cc/att: Dennis Muchmore, Governor's Office
John Nixon, Office of the State Budget
Dan Wyant, Director, DEQ
Jim Sygo, Deputy Director, DEQ
Randy Gross, Legislative Liaison, DEQ
Liane J. Shekter Smith, DEQ

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REPORT OF ACTIVITIES FUNDED BY THE STAFF ACCOUNT OF THE SOLID WASTE MANAGEMENT FUND

OCTOBER 1, 2009 – SEPTEMBER 30, 2010

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Subsection 11550(6) of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), states in part:

By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities of the previous fiscal year funded by the staff account of the solid waste management fund....

Following is the information as outlined in Subsections 11550(6)(a) through (i):

(a) Full-Time Equivalent (FTE) Positions

Solid waste activities carried out by the Department of Natural Resources and Environment (DNRE), now the Department of Environmental Quality (DEQ), Resource Management Division (RMD), in fiscal year (FY) 2010, were conducted by 42 FTEs. These positions included permitting, licensing, compliance, and enforcement staff, such as geologists, engineers, and environmental quality analysts; district supervisors; and ERMD management and administrative support staff.

(b) Construction Permit Application Decisions

Four construction permit applications were pending at the beginning of FY 2010.

- (1) During FY 2010, 8 applications for permits to establish or expand solid waste disposal facilities were received. Of these, 1 application was determined to be administratively incomplete. A total of 7 applications were determined to be administratively complete.
- (2) Seven of the 12 administratively complete applications were approved, and 1 applicant withdrew an application. There were zero applications denied. At the end of FY 2010, there were 4 applications pending a decision.
- (3) Of the applications that were determined to be administratively complete, 100 percent were decided upon within 120 days of being determined to be administratively complete, as required by Section 11511 of Part 115.¹

¹ The processing deadline is specified in Subsection 1307(1) of Part 13, Permits, of the NREPA, which requires that the DNRE approve or deny an application for a construction permit under Section 11509 by the 120-day processing deadline.

CONSTRUCTION PERMIT APPLICATIONS	
Pending Applications as of October 1, 2009	4
Number of New Applications Received	8
Number of Applications Administratively Incomplete	1
Number of Applications Withdrawn	1
Number of Permits Issued	7
Number of Applications Denied	0
Number of Pending Applications as of September 30, 2010	4
Percent of Decisions Made on Time	100%

(c) Operating License Applications Received Under Section 11512 of Part 115

At the beginning of FY 2010, 15 operating license applications were pending a decision.

- (1) During FY 2010, 53 applications for new or renewal licenses to operate solid waste disposal facilities were received.
- (2) A total of 53 applications were determined to be administratively complete. There were 2 applications determined to be administratively incomplete. A total of 56 applications were approved, zero applicants withdrew their application, and zero license applications were denied. At the end of FY 2010, there were 12 applications pending a decision.
- (3) Of the license applications that were determined to be administratively complete in FY 2010, 100 percent were decided upon within 90 days of being determined to be administratively complete, as required by Section 11516 of Part 115.²

OPERATING LICENSE APPLICATIONS	
Pending Applications as of October 1, 2009	15
Number of New Applications Received	53
Number of Applications Administratively Incomplete	2
Number of Applications Withdrawn	0
Number of Licenses Issued	56
Number of Applications Denied	0
Number of Pending Applications as of September 30, 2010	12
Percent of Decisions Made on Time	100%

² The processing deadline is specified in Subsection 1307(1) of Part 13, Permits, of the NREPA, which requires that the DNRE approve or deny an application for an operating license under Section 11512 by the 90-day processing deadline.

d) Number of Inspections of Licensed Disposal Areas as Required by Section 11519 of Part 115

During FY 2010, 837 inspections of licensed solid waste facilities were conducted.³

(e) Number of Letters of Warning (LOWs) Sent to Licensed Disposal Areas

During FY 2010, 57 LOWs were sent to licensed disposal areas.⁴

(f) Number of Contested Case Hearings Initiated in FY 2010: 1

Number of Contested Case Hearings Completed in FY 2010: 3

Number of Civil Actions Initiated in FY 2010: 0

Number of Civil Actions Completed in FY 2010: 0

Number of Voluntary Consent Orders and Administrative Orders Entered or Issued in FY 2010: Five voluntary consent orders were entered and one Agreement for a Limited Residential Remedial Action was entered.

Amount of Fines and Penalties Collected in FY 2010 Through Such Actions or Orders: \$46,700

g) Description of Corrective Actions Required by Enforcement Actions

(1) City of Detroit, Southfield Yard Transfer Facility

On April 8, 2010, the city of Detroit (City) voluntarily entered into an administrative consent order (Consent Order) with the DNRE to resolve violations of Part 115 and the rules promulgated under Part 115, at the City's Southfield Yard Transfer Facility (Transfer Facility). The Consent Order was entered based on a Violation Notice (VN) issued to the City on January 6, 2010, alleging that the

³ A total of 912 compliance inspections were conducted in FY 2010. However, 837 are reported here because Subsection 11550(6)(e) requests the number of inspections at licensed disposal areas. The remaining 75 inspections were conducted either at sites of illegal operations or at Type B transfer facilities that are authorized to operate by the statute, but are not required to have an operating license.

⁴ A total of 83 LOWs were issued in FY 2010. However, 57 are reported here because Subsection 11550(6)(e) requests the number of LOWs sent to licensed disposal areas. The remaining 26 LOWs were sent either to owners or operators of disposal areas that are not required to have an operating license or to owners or operators of sites determined to be illegal operations. An example of a legal solid waste disposal area that does not require a license to operate is a Type B solid waste transfer facility. Although these disposal areas are not licensed, they are inspected for compliance with the operational requirements of Part 115 and the Part 115 Rules. The number of LOWs sent in FY 2010 may encompass some inspections made in the last quarter of FY 2009.

City had operated the Transfer Facility without an effective solid waste disposal area operating license by accepting solid waste for disposal after the operating license had expired. The VN also alleged that the City failed to comply with the operational requirements of the Part 115 Rules applicable to the Transfer Facility. The City failed to maintain and repair the fence around the facility to limit access and to maintain facility roads to allow easy access under all weather conditions. Under the Consent Order, the City was required to repair the damaged fence and the drain pipes below the facility road to prevent the ponding of water on the surface of the road. Based on an application made during the proceedings, the City was issued an operating license upon entry of the Consent Order.

(2) The Detroit Edison Company, Sibley Quarry Landfill

The Detroit Edison Company (DTE) voluntarily entered into an administrative Consent Order with the DNRE on March 3, 2010, to resolve alleged violations of Part 115, the Part 115 Rules, and the solid waste disposal area operating license at the Sibley Quarry Landfill. The Consent Order was entered based on a VN issued to DTE on November 18, 2009, alleging that DTE failed to submit proper construction certification and receive authorization from the DNRE prior to placing solid waste in new areas of the landfill not previously authorized for disposal. The Consent Order required DTE to implement measures to ensure that solid waste will not be placed in uncertified and unauthorized areas at the landfill until after the area intended for waste placement had been certified and the construction certification approved by the DNRE. DTE agreed to pay \$8,500 to the State of Michigan to settle the DNRE's claim for a civil fine.

(3) Richfield Landfill, Inc., Richfield Landfill

On January 15, 2010, Richfield Landfill, Inc. (Richfield), and the DEQ executed an agreement to resolve alleged violations of the Consent Decree, Ingham County Circuit Court File No. 08-751-CE (Consent Decree). On October 28, 2009, the DEQ made a demand for stipulated penalties under the terms of the Consent Decree because Richfield had failed to make timely payments to its Perpetual Care Fund as required by paragraph 6.3(e) of the Consent Decree. Richfield and the DEQ ultimately agreed to a payment plan and schedule to resolve the alleged violations that also required Richfield to pay to the State of Michigan stipulated penalties in the amount of \$10,000.

Also on January 15, 2010, Richfield and the DEQ voluntarily entered into an administrative Consent Order, WHMD Order No. 115-01-10, to set forth the terms of certain financial assurance obligations of Richfield that apply to all future operating licenses for the Richfield Landfill. The need for this Consent Order became apparent during review of an application for an operating license submitted by Richfield in the fall of 2009. Agreements between the parties regarding financial assurance amounts required for certain areas of the landfill had been set forth in a previous Consent Order, WHMD Order

No. 115-05-31-09-01, that was terminated on May 30, 2008. The January 15, 2010, Consent Order restates the previous agreements by specifying the financial assurance amounts required for those areas of the "Old Fill Area" that are certified closed and not certified closed, the area of Cell 1 that is designated as an "unclosed area at final grade" in the 2009 operating license application, and the existing and any new landfill units.

(4) Richfield Landfill, Inc., Richfield Landfill

On January 29, 2010, the DNRE issued an Enforcement Notice and proposed administrative Consent Order to Richfield to resolve alleged violations at the Richfield Landfill. Richfield voluntarily entered the Consent Order with the DNRE on that same day. The Consent Order originated because Richfield failed to comply with the Construction Quality Assurance Plan (CQAP) approved by the DNRE, under Solid Waste Disposal Area Construction Permit Number 4099, for the Richfield Landfill. Specifically, during construction of Cell 3, Richfield failed to conduct all of the necessary trial weld tests to ensure the seam welding machine was operating correctly and failed to conduct enough destructive seam tests on the liner system. Further, the construction quality assurance officer and certifying engineer did not ensure that the liner construction was properly documented in accordance with the approved CQAP. The DEQ denied Richfield's construction certification on December 17, 2009.

Based on the review of information received in a January 25, 2010, letter from Richfield, including the test results of 17 additional destructive seam tests that were conducted in late December 2009, the DNRE determined that the construction certification could be approved upon resolution of the alleged violations through entry of the Consent Order. The Consent Order requires Richfield to: (a) supplement quarterly monitoring reports for all current and future cells with increased information on the volume of leachate removed per month from the primary and secondary leachate collection systems, along with a new narrative that analyzes leachate volumes in relation to action flow rates; and (b) submit an addendum to the hydrogeological monitoring plan for the landfill to memorialize the information to be supplemented in the quarterly monitoring report. In addition, Richfield agreed to pay \$24,400 in four equal monthly payments of \$6,100 in March, April, May, and June 2010 to settle the DNRE's claim of civil fines arising from the alleged violations.

(5) St. Clair County, Smiths Creek Landfill

On July 6, 2010, St. Clair County (County) voluntarily entered an administrative Consent Order with the DNRE to resolve violations of Part 115 at the Smiths Creek Landfill (SCL). The Consent Order was entered based on a VN issued to the County on May 27, 2010, alleging that the County continued to operate its Research, Development, and Demonstration Project (RDDP) after Solid Waste Disposal Area Construction Permit Number 4085, the authorization for the

RDDP, had expired on February 23, 2010. The County did not file an administratively complete application to extend the term of Permit No. 4085 until May 24, 2010. Under the terms of the Consent Order, the County made a payment of \$3,800 to the State of Michigan to settle the DNRE's claim for a civil fine resulting from the alleged violation. The term of Permit No. 4085 was extended for a period of three years to February 23, 2013, in accordance with Section 11511b(8) of Part 115 upon entry of the Consent Order.

(6) Southeast Berrien County Landfill Authority

On February 8, 2010, the Southeast Berrien County Landfill Authority (Authority) and the DNRE entered into an Agreement for a Limited Residential Remedial Action (Agreement). The Agreement is the mechanism by which the DNRE will enforce implementation of the DNRE-approved Remedial Action Plan (RAP) to address contamination at and emanating from the Southeast Berrien County Landfill, a Type II sanitary landfill permitted and licensed under Part 115. The RAP is required by Part 115 and a previous Consent Order to provide for response activities sufficient to meet the applicable criteria under Part 201, Environmental Remediation, of the NREPA. The Agreement satisfies the requirements of Section 20120b(3) of Part 201, as well as requirements under Part 115, the Part 115 Rules, and the Consent Order as amended. The Agreement identifies the scope of the RAP and specific performance standards by which implementation and effectiveness will be monitored and enforced. The Agreement also includes notification and reporting requirements and a process to modify the RAP, if needed, to ensure the continued protection of public health, safety, welfare, and the environment.

(h) Number of Solid Waste Complaints Received, Investigated, Resolved, and Not Resolved by the DNRE

During FY 2010, the DNRE received 198 solid waste complaints, 114 of which were investigated via inspections. The remaining 84 complaints were resolved by contact with the parties involved, were appropriately referred to other DNRE program divisions or other agencies, or are still under investigation.

(i) Amount of Revenue Remaining in the Staff Account at the End of FY 2010

The amount of revenue in the Solid Waste Management Fund `Staff Account at the end of FY 2010 was \$835,515.